

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 New Jersey Avenue, N.W., Suite 9500
Washington, D.C. 20001

September 29, 2006

ARACOMA COAL COMPANY, INC.,	:	CONTEST PROCEEDINGS
Contestant	:	
	:	Docket No. WEVA 2006-824-R
	:	Citation No. 7253529; 07/13/2006
	:	
v.	:	Docket No. WEVA 2006-825-R
	:	Order No. 7253530; 07/14/2006
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Aracoma Alma Mine #1
ADMINISTRATION, (MSHA),	:	Mine ID 46-08801
Respondent	:	

ORDER TO RESPOND TO ORDER TO SHOW CAUSE

To date, Aracoma has filed more than 350 Notices of Contest under section 105(d) of the Federal Mine Safety and Health Act of 1977, as amended, (the Mine Act), 30 C.F.R. § 815(d), that it has contemporaneously agreed to stay pending its contest of the Secretary's proposed civil penalties. On August 25, 2006, Aracoma was ordered to show cause why its contest of the captioned citations should not be dismissed as a result of its apparent contravention of Commission Rule 20(e)(1)(ii), 29 C.F.R. § 2700.20(e)(1)(ii) because it fails to adequately specify the relief requested, and because it is a duplicative and needless consumption of the Commission's resources. 29 FMSHRC 763. The August 25, 2006, Order to Show Cause issued to Aracoma is incorporated by reference.

During a subsequent telephone conference, Aracoma was advised to hold its response to the August 25 Order in abeyance pending the disposition of a similar Order to Show Cause in *Marfork Coal Company, Inc. (Marfork)*, Docket Nos. WEVA 2006- 788-R through WEVA 2006-790-R. 29 FMSHRC 745 (Aug. 2006). Marfork's 105(d) contest was dismissed on September 27, 2006. *Order of Dismissal*, 29 FMSHRC ____ (Sept. 2006).¹

The *Marfork* matter now having been resolved, **IT IS ORDERED** that Aracoma **SHOW CAUSE**, within fifteen (15) days of this Order, why its contest of the captioned cases should not be dismissed. Aracoma's response should include a statement of the facts, if any, that distinguish its contest from the underlying facts in *Marfork*. Aracoma's response should specifically address the applicability of the statutory and Commission Rule provisions, and the case law cited in *Marfork* that

¹ A copy of the recent Marfork *Order of Dismissal* has been provided for the Aracoma's reference.

support its contests. In addition, using traditional methods of statutory construction, Aracoma should state why it believes its contest satisfies the provisions of section 105(d).

Jerold Feldman
Administrative Law Judge

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